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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,944	02/06/2004	Christopher J. Cookson	3054-056	1222

22440 7590 08/28/2006

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EXAMINER	
KOSTAK, VICTOR R	
ART UNIT	**PAPER NUMBER**
2622	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,944	COOKSON ET AL.	
	Examiner	Art Unit	
	Victor R. Kostak	2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *19 and 20* is/are allowed.

6)☒ Claim(s) *13-18* is/are rejected.

7)☒ Claim(s) *1-12* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. It is initially of the requirements of rule 111 sections (b) and (c) . Section (b) of the rule points out that applicant's reply "***must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.***"

The rule continues in stating that: "***A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.***" Section (c) is similar to section (b).

Applicant presents a general statement that Lawton does not discloses a subliminal encoding system but does not specify a distinction between claim language and the applied reference. Applicant makes no mention of which claims and their respective limitations are in view.

Furthermore, none of independent claims 7, 13 and 19 explicitly recites subliminal messaging. Claim 13 further fails to include scaling (resizing).

Applicant also adds new claims but does not account for them in his arguments as required by rule 111(b).

2. Claims 1-12 are now objected to because of the following informalities:

(a) in amended claim 1 line 7, "luminances" is misspelled;

(b) claim 1 is also ambiguous because in the last line, it is not clear that the decoding is actually carried out. The phrase "*can be*" only means that the process is possible rather than the

process actually happening. As such, since claim 1 is a method claim, that step does not actually occur and contribute to the overall process; and

(c) in the penultimate line of amended claim 7, "*survives*" is misspelled.

Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13, 14, 17 and 18 are now rejected under 35 U.S.C. 102(b) as being anticipated by Broughton # 4,807,031 (cited by applicant).

As acknowledged by applicant in the discussion of the prior art (page 1 of applicant's specification), Broughton encodes data in the viewable portion of a video signal (noting also Figs. 1 and 2 of Broughton). Broughton increases and decreases the brightness of a group of lines within a portion of the video frame (again noting Fig. 2) in a predetermined pattern, to an extent that does not have a negative effect on the video signal (e.g. col. 2 line 66 – col. 3 line 3). The luminances of the lines being increased and decreased such that the group of lines are adjacent other lines whose luminances are changed in the same direction (it is noted that applicant does not specify multiple or at least "2N" lines, as specified in other claims), thereby meeting claim 13.

As for claim 14, the luminance (or brightness) of an entire line is changed uniformly (noting again Fig. 2).

As for claim 18, Broughton changed the brightness of neighboring lines in opposite directions by the same amount to thereby neutralize the effect.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broughton et al.

It would have been obvious to one of ordinary skill in the art to consider the alternating brighter/darker pattern as following either a sinusoidal function or a sawtooth function, both characterized by a periodic function with alternating max and min points of equal magnitudes.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Claims 1-12, 19 and 20 appear allowable over the prior art.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any response to this final action should be mailed to:

Box AF
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Or faxed to:

(571) 273-8300

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office whose telephone number is (703) 308-HELP.

Victor R. Kostak
Primary Examiner
Art Unit 2622

VRK